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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/746,901 11/18/96 ELLIOTT

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EXAMINER

WORLD COM, INC  
TECHNOLOGY LAW DEPARTMENT  
1133 19TH ST, NW  
WASHINGTON DC 20036

NGUYEN, S

ART UNIT

PAPER NUMBER

2664

DATE MAILED:

03/27/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/746,901

Applicant(s)

ELLIOTT, ISAAC K.

Examiner

Steven HD Nguyen

Art Unit

2664

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 31-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 20.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

## DETAILED ACTION

### *Continued Prosecution Application*

1. The request filed on 1/24/2001 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/746901 is acceptable and a CPA has been established. An action on the CPA follows.

### *Response to Preliminary Amendment*

2. This action is in response to the preliminary amendment filed on 1/24/2001. Claims 1 – 30 have been canceled and claims 31-38 are pending in the application.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 31-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claims 31 and 35 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: attempts to route the call over the selected gateway; **if the route fails, route the call via the next ranked gateway.**

6. Claim 36 recites the limitation "said logic attempts" is vague and indefinite because it does not refer to any previous element.

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7. Claims 37 and 38 recite the limitation "said logic ranked" is vague and indefinite because it does not refer to any previous element.

There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 31-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang (RFC 1789) in view of Kenner (USP 6003030) and Gawlick (USP 6175870).

As claims 31-38, Yang discloses a plurality of gateways and call router which connects the switched communication network and the packet network having a logic which transmits a query message which includes a call type of service to the directory service to obtain a plurality of gateways that match the predefined call service criteria and an identifier of the call to an associated IP address and routing the call to the

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selected gateways (Page 1-5, Yang discloses a plurality of gateways and a call router connected between the telephone network and computer network to allow a caller to communicate with the other caller in which the call router used to route a call from source to destination and the gateways used to perform the protocol converter such as convert analog voice to data voice to transmit in the Internet etc . . . When the first server which generates a query message to a directory server to obtain at least on of plurality of gateways which have an IP address corresponding to a telephone number of a destination). However, Yang does not disclose transmitting a message to each of a plurality of gateways to obtain a trace route, ranks the plurality of gateways according to the result of the trace route message, selecting a gateway with a highest ranking from the plurality of gateways for attempting to route a call over the selected gateway. In the same field of endeavor, Kenner disclose a communication system which queries a database to obtain a list of plurality servers "gateways" and sends a trace route message to each of plurality of gateways and prioritizing the plurality of gateways according to the test results and selecting a highest priority "shortest hop" to transmit a message (See col 18, lines 60 to col 19, lines 33, col 9, lines 55 to col 10, lines 10; col 11, lines 20-27), and Gawlick discloses a communication system for routing a call on the highest ranked path "minimum hop path if hop equal 1, it means no router between the access point and gateway, col 6, lines 44-60"; if failing, the call will be routed via a next highest ranked path in the set of paths (See Fig. 5, Ref 515, 530, 550 and 527).

Since, Yang suggests that a delay of Internet must be taken into consideration. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the

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invention was made to apply the teaching of Kenner and Gawlick such as determining the delay between the access point and the plurality of servers and alternated routing into Yang's internet telephony system. The motivation would have been to maintain the quality service of audio packets.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kaplan (USP 6016307) discloses a method and apparatus for determining the characteristic of routing paths between accessing point and the gateways (POPs) and ranking them according to the number of hops between accessing point and the gateways.

Tsuchiya (USP 5115495) discloses a method and apparatus for selecting a shortest path to route the data packet between the source and destination. If the shortest path is unavailable, rerouting the data packets via a next highest ranking in the paths.

Bellovin (USP 5870557) discloses a method and system for using trace route to analyze the round trip delay.

Hluchyj (USP 5402478) discloses a fallback system and method for rerouting a call that fails to be established utilizing a first set of constraints in communication network.

Kenner (USP 6154744) discloses a method and system for using a trace route message to determine the distance between the access point and a plurality of servers.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (703) 308-8848. The examiner can normally be reached on 8-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chin Wellington can be reached on (703) 308-4366. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3988 for regular communications and (703) 305-3988 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-4366.

Steven Nguyen  
March 19, 2001



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